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# IMPLEMENTATION OF HUMAN RIGHTS BY THE UNITED NATIONS AND REGIONAL ORGANIZATIONS\*

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## INTRODUCTION

THE OBSERVANCE of the 20th anniversary of the Universal Declaration of Human Rights in 1968 was marked by national, regional and international seminars, conferences and cultural programs.<sup>1</sup> The celebrations, held pursuant to the General Assembly's designation of 1968 as the International Year for Human Rights,<sup>2</sup> were, however, overshadowed by violations of those very rights which the United Nations was attempting to promote. For instance: Inhumane practices of apartheid in Southern Africa continued; the internal turmoil in Nigeria emerged as a conflict of horrifying destruction; the toll of mounting casualties of civilians in the Vietnam conflict was reaching major proportions; and the plight of the refugees in the Middle East was as apparent, if not more so, as it had been since the late 1940's. Since then, gross violations have been reported in several places including Bangladesh, Northern Ireland, the Sudan, Laos, Cambodia and Vietnam.

Notwithstanding an impressive catalogue of U.N. resolutions and covenants on human rights,<sup>3</sup> two basic problems remain: (1) devising effective machinery and procedures for national, regional

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1. See 23 U.N. GAOR, Agenda Item No. 62, *Measures and Activities Undertaken in Connection with the International Year for Human Rights: Report of the Secretary-General*, U.N. Doc. A/7195 & Add. 1-9 (1968).

2. Designatee per G.A. Res. 1961, 18 U.N. GAOR, Supp. 15, at 43, U.N. Doc. A/5515 (1963).

3. See generally United Nations, *Human Rights: A Compilation of International Instruments of the United Nations*, U.N. Doc. A/CONF. 32/4 (1967).

and international enforcement and implementation, and (2) encouraging and strengthening the existing formal and informal structures of international cooperation in order to protect the rights of individuals and groups. This paper will briefly discuss the enforcement and implementation issues at the United Nations, and investigate the desirability of encouraging regional enforcement measures. The discussion will be prefaced by a few comments on the concept of human rights.

#### THE HUMAN RIGHTS CONCEPT

Basic human rights are defined in a general, abstract fashion as "human dignity, the general rights of all members of the human race without distinction of time, place, colour, sex, birth or social grouping."<sup>4</sup> It should be noted that the current literature shows a lack of general clarity on the concept of human rights, for human rights have thus far been discussed without reference to a theoretical framework of the world constitutive process and without adequate empirical reference to the claims of human rights. A single outstanding exception is the pioneering attempt of Professors McDougal, Lasswell and Chen.<sup>5</sup> Employing the policy-science approach associated with the New Haven School, Professors McDougal, *et al* have attempted to provide a comprehensive theoretical framework for a better understanding of the concept and for its application in specific situations.<sup>6</sup>

One could perhaps discern Western-oriented, natural law underpinnings in the U.N. human rights declarations and treaties, but the fact remains that the concept of certain fundamental, inalienable rights that must be guaranteed to human beings the world over<sup>7</sup> finds support in the words of both the political philosophers of socialist states and of non-Western states as well.<sup>8</sup> This consensus

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4. Resich, *The U.N. Commission on Human Rights*, 15 REV. CONTEMPORARY L. No. 1, at 27 (1968).

5. McDougal, Lasswell & Chen, *Human Rights and World Public Order: A Framework for Policy-Oriented Inquiry*, 63 AM. J. INT'L L. 237 (1969).

6. *Id.*, especially at 245-58.

7. See generally M. CRANSTON, *WHAT ARE HUMAN RIGHTS?* (1962).

8. See, e.g., SOCIALIST CONCEPT OF HUMAN RIGHTS (Nos. 1 & 2 of the series in foreign languages, Institute for Legal and Administrative Sciences of the Hungarian Academy of Sciences, 1966); George, *Human Rights in India*, 11 HOWARD L.J.

is responsible for creating community expectations that basic human rights will be protected at least in those states where these rights are widely discussed and publicized. Also, it aids in translating the concept into specific multilateral agreements and conventions, many of which, however, are likely to be vague, for conflicting national interests, foreign policy considerations, divergent philosophical bases and cultural biases are among many considerations that compel negotiators to agree upon the least common denominator.

However, it could perhaps be argued that a significant step forward has been taken, from declarations to concrete achievements, by the U.N. adoption in December, 1965 of the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>9</sup> and in December, 1966 of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights.<sup>10</sup> Still, the key issue is the lack of effective enforcement and implementation.

#### THE ENFORCEMENT ISSUES OF THE UNITED NATIONS

##### MAJOR PROBLEMS THE U.N. HAS FACED IN INSTITUTIONALIZING ENFORCEMENT MEASURES

The reluctance of states to accept third party decision making for resolving international controversies and conflicts is at the root of the enforcement issue. It is highly unlikely that a proposal permitting individuals to bring petitions against a state before an inter-

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291 (1965); and other articles in the same issue of *Howard Law Journal* at 316, 325, 463, and 500 dealing with human rights in Japan, in Islamic Law, in Nigeria, and in Sierra Leone respectively.

9. The International Convention on the Elimination of All Forms of Racial Discrimination was unanimously adopted by the General Assembly in December 1965. See U.N. Doc. A/Res. 2106 (XX) (1965). For an incisive commentary on the Convention, see Schwelb, *The International Convention on the Elimination of All Forms of Racial Discrimination*, 15 INT'L & COMP. L.Q. 996 (1966). A recent full length study on the Convention is N. LERNER, *THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION* (1970). Another recent commentary is Das, *Measures of Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination with Special Reference to the Provisions Concerning Reports from States Parties to the Convention*, 4 REVUE DES DROITS DE L'HOMME 213 (1971).

10. For the text of the Covenants, see 21 U.N. GAOR, Supp. 16, at 49-60, U.N. Doc. A/6316 (1966).

national tribunal would be acceptable to a majority of states.<sup>11</sup> Similarly, the creation of an international machinery to hear reports from states on the measures taken toward implementing the U.N. Human Rights Program, or to hear state versus state complaints and a procedure to act upon such complaints, finds few advocates among states.<sup>12</sup>

Another problem, conceptual in nature, stems from the traditional international law doctrine which recognizes only states as the subjects of international law, and denies individuals direct access to the international arena to claim rights on their own.<sup>13</sup> Although this rigid approach has been consistently challenged since the Nuremberg trials,<sup>14</sup> the exclusion of individuals from international forums, with very few exceptions, persists.

#### EFFORTS AT THE UNITED NATIONS

At its adoption, the Universal Declaration of Human Rights<sup>15</sup> was not accompanied by "measures of implementation." However, from the very beginning, the U.N. Commission on Human Rights was concerned with the implementation aspects of human rights. The often-quoted language in the Preamble of the U.N. Charter is instructive: "We the people of the United Nations are determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] to *employ international machinery* for the promotion of the economic and social advancement of all peoples." (Emphasis added) Thus, during its first year of operation, the U.N. Economic and Social Council, which had assumed primary responsibility in this field, adopted a resolu-

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11. See, e.g., Bokor, *Human Rights and International Law*, in *SOCIALIST CONCEPT OF HUMAN RIGHTS*, *supra* note 8, at 267, 286-87, 297.

12. The unenthusiastic response, thus far, of states in ratifying the two international covenants and the optional protocol is an indication of states' attitude toward reporting on implementation, and on providing state versus state complaints procedure.

13. For a recent discussion, see Tucker, *Has the Individual Become the Subject of International Law?*, 34 U. CIN. L. REV. 341 (1965).

14. The first influential work challenging the rigid approach was P. JESSUP, *A MODERN LAW OF NATIONS* (1948). See also *In Re Yamashita*, 327 U.S. 1 (1946); Brownlie, *The Place of the Individual in International Law*, 50 VA. L. REV. 435 (1964); Cohen, *The Individual in International Law*, in *HUMAN RIGHTS, FEDERALISM AND MINORITIES* (Gotlieb ed. 1970).

15. G.A. Res. 217 A (III), 3 U.N. GAOR 71, U.N. Doc. A/810 (1948).

tion stating that the U.N. objective of promoting human rights could only be fulfilled "if provisions are made for the implementation of human rights, and of an international bill of rights."<sup>16</sup>

With the adoption of the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights, and the Optional Protocol thereto, an "international bill of rights,"<sup>17</sup> consisting of the Universal Declaration of Human Rights, the two covenants and the protocol, has been completed. However, the procedural arrangements and the institutional machinery for the promotion and observance of human rights—the implementation provisions—contained in the covenants are disappointing. As Professor MacChesney points out: "Not only are they less efficacious than the earlier provisions in the Human Rights Commission's final draft, but they are distinctly retrogressive when compared with the recently adopted Racial Discrimination Convention."<sup>18</sup> A recapitulation of the efforts at the United Nations over a twenty year period, from 1947 to 1966, will provide the necessary perspective to appreciate the problems of effective implementation.<sup>19</sup>

### *The Period Between 1947 and 1954*

The U.N. Commission on Human Rights was primarily concerned with drawing up the substantive provisions of the covenants during this period. An eight-member drafting committee of the Commission had discussed the possible deterrents against violations of the contemplated covenants as early as 1947. These included: Instituting an International Court of Human Rights; international censure of the violator by discussing petitions addressed to the United Nations by individuals and groups; and creating U.N. machinery to deal

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16. Res. 9 (II), § 7, ECOSOC Off. Rec., 2d Sess., at 400-402 (1946).

17. *Supra* note 3, at 1-18.

18. MacChesney, *International Protection of Human Rights* (May 15, 1969) (paper presented at a regional conference of the American Society of International Law held in Denver, Colorado. A copy of the paper is available in the library at the University of Denver College of Law, Denver, Colorado.)

19. Dr. Egon Schwelb has done definitive work on various aspects of the U.N. Human Rights Program. See, e.g., Schwelb, *Notes on the Early Legislative History of the Measures of Implementation of the International Covenants on Human Rights*, in MELANGES MODINOS (Paris, 1968); Schwelb, *Civil and Political Rights: the International Measures of Implementation*, 62 AM. J. INT'L L. 827 (1968).

with communications alleging the violations of human rights.<sup>20</sup> The next step was the formulation by the Commission in December, 1947, of a "working group on implementation." This six-member working group submitted a report to the Commission recommending the establishment of a standing committee of independent members to supervise the observance of the provisions of the contemplated covenant or covenants, to receive petitions from individuals, groups and states alleging the violations of human rights, and to provide negotiation procedures to remedy the violations of the covenants.<sup>21</sup>

While the Commission forwarded the working group's report to the Economic and Social Council without taking action on it, the General Assembly, at the time of the adoption of the Universal Declaration of Human Rights, requested the Commission to give priority to the drafting of measures of implementation.<sup>22</sup> However, it should be noted that these recommendations were later accepted as an integral part of the functioning of the European Commission on Human Rights, and were also adopted in several instruments such as the Racial Discrimination Convention, the Covenant on Civil and Political Rights and the Optional Protocol thereto.

For the next six years, the Commission on Human Rights discussed various proposals on implementation provisions. The three main issues to be decided were: (1) the creation of an international machinery; (2) the role of the established machinery in supervising the observance of the contemplated covenant, especially the initiative the proposed machinery would take in order to inquire into cases where it considered the nonobservance of the covenant serious enough; and (3) the right of access to and invocation of the international machinery.

On the first point, the creation of the international machinery, the Commission draft of 1950<sup>23</sup> provided for the establishment of a "Human Rights Committee" to consider disputes between states and to offer its good offices for their settlement.<sup>24</sup> Ever since,

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20. *See Report of the Drafting Committee*, U.N. Doc. E/CN. 4/21 (1947).

21. *Report of the Working Group on Implementation*, 6 U.N. ECOSOC, Supp. 1, at 33, U.N. Doc. E/600 (1947).

22. G.A. Res. 217 B and E, U.N. Doc. A/777 (1948).

23. The draft is conveniently contained in UNITED NATIONS, YEARBOOK ON HUMAN RIGHTS FOR 1950, at 520 (1951).

24. *Id.*

the proposal has been accepted in principle and finds a place in the subsequently adopted covenants and conventions. However, over the years, discussions have centered around two issues: (1) the nature of the membership of the Committee; that is, if the Committee should be composed of independent, nongovernment people elected by the International Court of Justice and paid through U.N. resources, or of nationals of member states elected by the states parties to the covenant; and (2) whether the Committee should be permanent or *ad hoc*. The Commission's 1953 draft<sup>25</sup> provided for the election of the Committee members by the International Court of Justice,<sup>26</sup> but this recommendation was reversed by the General Assembly decision in 1966 at the time of the adoption of the covenants.<sup>27</sup> Also, while the 1950 draft of the Commission would have provided for a permanent committee,<sup>28</sup> the General Assembly, in 1966, partially rejected the idea insofar as it adopted the proposal to set up *ad hoc* conciliation commissions to resolve conflicts pertaining to the Covenant on Civil and Political Rights.<sup>29</sup>

On the second point, the nature of the supervisory role of the international machinery, a proposal to entitle the contemplated Human Rights Committee to initiate inquiries in cases of serious violations of covenants was rejected.<sup>30</sup>

On the third point, the choice was between the following alternatives: (1) entitling individuals, groups of individuals and nongovernmental organizations to invoke the international protection procedure by submitting a petition to the Human Rights Committee alleging the violation of civil and political rights, and (2) restricting the Committee to receiving only state versus state complaints. The Commission's draft adopted the latter approach, rejecting all efforts

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25. The draft is conveniently contained in UNITED NATIONS, YEARBOOK ON HUMAN RIGHTS FOR 1953, at 370-73 (1955).

26. Article 30 of the draft, contained in *id.* at 371.

27. See article 30 of the Covenant on Civil and Political Rights, contained in GA Res. 2200 A (XXI), 21 U.N. GAOR, Supp. 16, at 56, U.N. Doc. A/6316 (1967).

28. See *supra* note 23.

29. See article 42 of the Covenant on Civil and Political Rights, *supra* note 27, at 57-58.

30. Report of the Ninth Session of the Commission on Human Rights, 16 U.N. ECOSOC, Supp. 8, at 14-17, U.N. Doc. E/2447 (1953).



to give access to individuals and groups.<sup>31</sup> In state versus state complaints, however, the Commission's draft authorized the Committee to state its opinion if the facts disclosed a breach by a state of its obligation under the covenant.<sup>32</sup> The Committee was authorized to take this action only if it had been unable first to provide a friendly settlement through its good offices.<sup>33</sup> The only tangible method offered by the Human Rights Commission to enable international supervision on the observance of the covenants was a reporting system.<sup>34</sup> States parties to the draft Covenant on Civil and Political Rights were to report to the Economic and Social Council on the measures adopted by these states to give effect to the rights recognized in the covenant.<sup>35</sup> States parties to the draft Covenant on Economic, Social and Cultural Rights were also to submit reports on the measures adopted by them and the progress made in achieving observance of the rights recognized in the covenant.<sup>36</sup>

### *The Period Between 1954 and 1963*

During this period, the General Assembly was primarily concerned with drafting and redrafting the substantive provisions of the draft covenants. However, in 1963, the Third Committee of the General Assembly discussed the measures of implementation,<sup>37</sup> which was followed by the adoption of the Committee report in the plenary session of the General Assembly.<sup>38</sup> A decade had already passed

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31. For the discussion on the proposals to give individuals the right to petition, see *Commission on Human Rights: Report of the Tenth Session*, 18 U.N. ECOSOC, Supp. 7, at 22-25, U.N. Doc. E/2573 (1954) (hereinafter called *Report of the Tenth Session*); *Report of the Ninth Session of the Commission on Human Rights*, 16 ECOSOC, Supp. 8, at 14-17, U.N. Doc. E/2447 (1953).

32. Article 43(3) of the draft, contained in *Report of the Tenth Session*, *supra* note 31, at 70-71.

33. Articles 43(1) and 43(3) of the draft Covenant on Civil and Political Rights. *Supra* note 31, at 70.

34. Articles 17 and 18 of the draft Covenant on Economic, Social and Cultural Rights, *Report of the Tenth Session*, *supra* note 31, at 64 and Articles 48 and 49 of the draft Covenant on Civil and Political Rights, *Report of the Tenth Session*, *supra* note 31, at 71.

35. Article 49, contained in *Report of the Tenth Session*, *supra* note 31, at 71.

36. Article 17, contained in *Report of the Tenth Session*, *supra* note 31, at 64.

37. For the discussion, see 18 U.N. GAOR, 3d Comm., Agenda Item 48, at 272, 289-91, 294-98, 300-302, 327-31, 333-38, 347-57, 359, U.N. Doc. A/C.3/SR. 1264, 1267, 1268, 1269, 1273, 1274, 1276, 1277, 1278, 1279 (1963).

38. See 18 U.N. GAOR, Agenda Item 79, at 1-2, U.N. Doc. A/Pv. 1279 (1963).

since the Commission's draft in 1954, and the composition of the General Assembly had radically changed with the admission of many new members, especially from Africa. However, the positions of member states, especially those of major powers, had remained unaltered on the question of giving access to individuals and groups. Only one state, Finland, showed any enthusiasm in favoring the right of petition by individuals and groups.<sup>39</sup> The Soviet Union and the Eastern European states were still opposed to the creation of any international machinery to supervise the observance of the covenants' provisions, maintaining their earlier position that the implementation aspects should be the exclusive responsibility of each nation state.<sup>40</sup> However, they showed some flexibility by accepting the reporting system as envisaged in the 1954 draft.<sup>41</sup>

### *The Period Between 1964 and 1966*

The two major achievements of this period are the drafting of the Racial Discrimination Convention in 1965,<sup>42</sup> which contains the most advanced measures of implementation, and the adoption in 1966 of the Covenant on Civil and Political Rights and the Optional Protocol thereto and the Covenant on Economic, Social and Cultural Rights.<sup>43</sup> By early 1969 the Racial Discrimination Convention had already come into force.<sup>44</sup>

### MEASURES OF IMPLEMENTATION IN THE RACIAL DISCRIMINATION CONVENTION

The most salutary provision in the Racial Discrimination Convention is its provision to permit individuals to petition the machinery

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39. See, e.g., 18 U.N. GAOR, Agenda Item 48, Annexes, at 13 (USSR), U.N. Doc. A/5411/Add. 1 (1963); *supra* note 37, at 334 (Poland), 337 (Romania); U.N. Doc. A/C.3/SR.1274 (1963).

40. *Supra* note 37, at 296, U.N. Doc. A/C.3/SR.1268 (1963).

41. The draft resolution, containing the reporting procedure, was adopted unanimously. *Supra* note 37, at 359, U.N. Doc. A/C.3/SR.1279 (1963).

42. U.N. Doc. A/Res. 2106 (XX) (1965).

43. *Supra* note 10.

44. See U.N. Office of Public Information, *Convention on Elimination of Racial Discrimination Enters into Force*, L/T/430 HR/276, 13 March, 1969; 6 U.N. Monthly Chronicle No. 4, at 81 (April 1969). For the text of the Convention, see G.A. Res. 2106 A (XX), 20 U.N. GAOR, Supp. 14, at 47, U.N. Doc. A/6014 (1966) (hereinafter cited as Discrimination Convention).

established under the Convention—an eighteen-member Committee on the Elimination of Racial Discrimination composed of nongovernment “experts of high moral standing and acknowledged impartiality . . . who shall serve in their personal capacity.”<sup>45</sup> This provision, which stands unique in multilateral agreements reached under the auspices of the United Nations, is applicable only to a state which makes a declaration to the effect that it recognizes the competence of the Committee “to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth” in the Convention.<sup>46</sup> Even so, it is a significant step forward, especially since the Soviet Union and other states which have traditionally opposed the creation of any international body to hear petitions from individuals accepted this provision. In addition, the Convention provides for a procedure by which states are to report to the Committee on the measures “that they have adopted and that give effect to the provisions of this Convention.”<sup>47</sup> Furthermore, it provides for the creation of an *ad hoc* Conciliation Commission whose function is to assist in the efforts to reach an amicable settlement of state versus state complaints on the nonobservance of the Convention provisions.<sup>48</sup> It should be noted that while the Convention has adopted the procedure proposed in the 1954 draft of the Commission on the establishment of a committee to hear state versus state complaints,<sup>49</sup> it has varied its procedure in settling interstate conflicts by entrusting this task to an *ad hoc* Conciliation Commission instead of delegating this function to a committee.<sup>50</sup>

#### MEASURES OF IMPLEMENTATION IN THE COVENANTS

Unlike the Racial Discrimination Convention, the Covenants do not provide for a compulsory interstate complaints procedure. And, the General Assembly did not even seriously consider the question

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45. *Id.* article 8(1) of the Discrimination Convention.

46. *Id.* article 14(1) of the Discrimination Convention.

47. *Id.* article 9(1) of the Discrimination Convention.

48. *Id.* articles 12 and 13 of the Discrimination Convention.

49. *Id.* article 11 of the Discrimination Convention, *supra* note 9.

50. *Id.* articles 12 and 13 of the Discrimination Convention.

of providing for individual and group petitions, for several representatives had already expressed misgivings about treating the system adopted in the Racial Discrimination Convention as an appropriate precedent for the covenants. A statement by the Rumanian representative to the effect that human rights could not be built upon the ruins of national independence represents the views of those opposed to granting the right of petition to individuals.<sup>51</sup> Similarly, among others, the representatives from Ghana<sup>52</sup> and France<sup>53</sup> expressed themselves against integrating into the covenants the system contained in the Racial Discrimination Convention. The only agreement reached by the General Assembly upon the creation of an international machinery to protect human rights was to establish a Human Rights Committee<sup>54</sup> and to provide for the establishment of a reporting system,<sup>55</sup> measures far short of those adopted in the Racial Discrimination Convention.<sup>56</sup>

#### THE OPTIONAL CONCILIATION PROCEDURE

As an optional measure, the Assembly adopted a procedure whereby state versus state complaints could be instituted when both states, the one bringing the complaint and the other against whom the complaint is brought, have already made declarations recognizing the competence of the Human Rights Committee "to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations"<sup>57</sup> under the Covenant on Civil and Political Rights. The procedure requires that before referring a matter to the Committee, the state intending to do so must address a written communication to the state which is allegedly not giving effect to the Covenant provisions.<sup>58</sup> Reference

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51. 20 U.N. GAOR, Annexes, Agenda Item 65, *Report of the Third Committee*, U.N. Doc. A/6173 (1965).

52. *Id.*

53. *Id.*

54. Article 28 of the Covenant on Civil and Political Rights, *supra* note 27.

55. Article 40 of the Covenant on Civil and Political Rights, *supra* note 27; and article 16 of the Covenant on Economic, Social and Cultural Rights, *supra* note 10.

56. *See supra* notes 45-50.

57. Article 41(1) of the Covenant, *supra* note 27.

58. Article 41(1)(a) of the Covenant, *supra* note 27.

can be made to the Committee only if the matter is not settled to the satisfaction of both states after an attempt is made to do so.<sup>59</sup> The Committee can ask the states concerned for additional information.<sup>60</sup> Such states have a right to be represented before the Committee when it is considering the matter in question and to make submissions, orally and/or in writing.<sup>61</sup> The Committee would submit a report to the states concerned.<sup>62</sup> At this stage, the Committee's report should consist of a brief statement of facts which is to be submitted in either event—that is, whether a friendly settlement has or has not been reached.<sup>63</sup> It may be noted that the General Assembly rejected the earlier provision contained in the Commission's draft which would have authorized the Committee to state its opinion if the facts disclosed a breach by a state of its obligations under the covenant.<sup>64</sup>

The next stage would be to bring the proceedings before an *ad hoc* Conciliation Commission appointed by the Committee "with the prior consent of the State Parties concerned."<sup>65</sup> The Commission, whose objective is to find an amicable settlement of the matter referred, could, therefore, state its views on the possibilities of such a settlement.<sup>66</sup> However, states concerned are not obligated to accept the contents of the Commission's report,<sup>67</sup> wherein lies a serious deficiency in the efficacy of these measures. It may also be recalled that obligatory interstate complaints procedure had been adopted earlier under the auspices of the International Labor Organization, in a protocol to the UNESCO Convention Against Discrimination in Education, in the European Convention on Human Rights and in the Racial Discrimination Convention.<sup>68</sup>

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59. Article 41(1)(b) of the Covenant, *supra* note 27.

60. Article 41(1)(f) of the Covenant, *supra* note 27.

61. Article 41(1)(g) of the Covenant, *supra* note 27.

62. Article 41(1)(h) of the Covenant, *supra* note 27.

63. Article 41(1)(h)(i & ii) of the Covenant, *supra* note 27.

64. Article 43(3) of the draft, contained in *Report of the Tenth Session*, *supra* note 31, at 70-71.

65. Article 42(1)(a) of the Covenant, *supra* note 27.

66. Article 42(1)(a) of the Covenant, *supra* note 27.

67. Article 42(7)(d) of the Covenant.

68. See *supra* notes 48-50 for references to the Racial Discrimination Convention; 18 U.N. GAOR, Annexes, 2-11, Agenda Item No. 48, U.N. Doc. A/5411 & add. 1-2 (1963) for a discussion of the implementation measures of the ILO, the UNESCO Convention, and the European Convention.

THE OPTIONAL PROTOCOL TO THE COVENANT  
ON CIVIL AND POLITICAL RIGHTS

Although the Commission's draft of 1954 did not contain any provision concerning the right of individuals to petition the Human Rights Committee,<sup>69</sup> the General Assembly at its 21st Session adopted an optional protocol, authorizing the Committee to receive communications from individuals or groups of individuals claiming to be victim to a violation of the rights set forth in the covenant.<sup>70</sup> However, as a prerequisite to setting this procedure in motion, the state against whom the complaint was made must have declared that it recognizes the competence of the Committee to receive and consider such communications.<sup>71</sup> The initiative for proposing the inclusion of this provision in the covenant came from the Netherlands representative.<sup>72</sup> He was subsequently joined by a group of Afro-Asian states, offering a similar draft.<sup>73</sup> The General Assembly, however, primarily because of opposition from several states to the principle of permitting an individual to petition an international organ,<sup>74</sup> adopted a separate protocol on the subject instead of incorporating the provision into the covenant itself.

Individuals entitled to make a communication regarding an alleged violation must be subject to the jurisdiction of the state which is said to have violated the said right.<sup>75</sup> In certain cases, the Committee would consider the communication inadmissible.<sup>76</sup> However, if the communication is found to be admissible, a written procedure follows whereby the Committee considers the individual's communication and the government's response.<sup>77</sup> In closed meetings, the

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69. See Article 40 of the draft, contained in *Report of the Tenth Session, supra* note 31, at 70.

70. The text of the protocol is contained in *supra* note 3, at 16.

71. Article 1 of the Protocol, *supra* note 3.

72. For the draft, see U.N. Doc. A/C.3/SR.1355 (1966).

73. For the draft, see U.N. Doc. A/C.3/SR.1411, Rev. 1 & 2 (1966).

74. See, e.g., for the Romanian delegate's remarks 21 U.N. GAOR, at 227, U.N. Doc. A/C.3/SR.1416 (1966); for the Hungarian delegate's remarks, *id.* at 237, U.N. Doc. A/C.3/SR.1417; for the Polish delegate's remarks, *id.* at 251, U.N. Doc. A/C.3/SR.1420; and for the Czechoslovakian delegate's remarks, *id.* at 369, U.N. Doc. A/C.3/SR.1439 (1966).

75. Article 1 of the Protocol, *supra* note 3.

76. Article 5 of the Protocol, *supra* note 3.

77. Articles 4 and 5(1) of the Protocol, *supra* note 3.

Committee examines the communications<sup>78</sup> and then forwards its views to "... the State party concerned and to the individual."<sup>79</sup> Such proceedings are concluded in this fashion, without recourse to any other organ. However, under the protocol, the Committee is to include a summary of its activities in its annual report to the General Assembly.<sup>80</sup>

#### THE FUNCTIONS OF THE HUMAN RIGHTS COMMITTEE

Primarily, the eighteen-member Committee's function is to act on the reports submitted by states parties to the Covenant on Civil and Political Rights. This action consists of transmitting comments to the state parties and to the Economic and Social Council.<sup>81</sup> As noted earlier, the Committee is also authorized to deal with state versus state communications,<sup>82</sup> and in case of states parties to the Optional Protocol, it is competent to deal with communications from individuals.<sup>83</sup> Finally, the Committee has the duty of submitting an annual report on its activities to the General Assembly.<sup>84</sup>

#### THE REPORTING PROCEDURE OF THE COVENANTS

The reporting system constitutes the main mechanism for international control and supervision. Under both covenants, states parties are to submit periodic reports: to the Economic and Social Council (through the Secretary-General), under the Covenant on Economic, Social and Cultural Rights,<sup>85</sup> and to the Human Rights Committee, under the Covenant on Civil and Political Rights.<sup>86</sup> The Economic and Social Council is expected to report to the General Assembly "with recommendations of a general nature,"<sup>87</sup> but

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78. Article 5(3) of the Protocol, *supra* note 3.

79. Article 5(4) of the Protocol, *supra* note 3.

80. Article 6 of the Protocol, *supra* note 3; Article 45 of the Covenant on Civil and Political Rights, *supra* note 27.

81. Article 40(4) of the Covenant, *supra* note 27.

82. Article 41 of the Covenant, *supra* note 27.

83. Article 1 of the Protocol, *supra* note 3.

84. Article 45 of the Covenant, *supra* note 27.

85. Articles 16-17 of the Covenant, *supra* note 10.

86. Article 40 of the Covenant, *supra* note 27.

87. Article 21 of the Covenant on Economic, Social and Cultural Rights, *supra* note 10.

the Human Rights Committee is not authorized to make any recommendations.<sup>88</sup> Instead, under the covenant, it is to transmit its report to the states parties after it studies their reports.<sup>89</sup> It might, however, conclude in its report "such general comments as it may consider appropriate."<sup>90</sup>

#### THE CURRENT SITUATION OF THE ENFORCEMENT ISSUES AT THE UNITED NATIONS

The Racial Discrimination Convention is now in force, having received the required number of ratifications.<sup>91</sup> The Commission on Human Rights is vigorously pursuing the promotion of the U.N. Human Rights Program, and by publicizing the violations of human rights, it is able to bring widespread attention to the lack of effective enforcement measures.<sup>92</sup>

The United Nations continues to wrestle with the same two issues it faced at the threshold of its human rights program: (1) states still guard their national sovereignty dogmatically and they have yet to perceive a common interest in internationalizing and institutionalizing implementation measures; and (2) the position of the individual in international law is still anomalous, for while he is considered the object of international law, many states still refuse to consider him an appropriate subject of international law so as to entitle him to invoke the international machinery on his own behalf. This situation persists despite urging to the contrary by most modern publicists.<sup>93</sup>

It should be noted that the major powers, including the United States and the Soviet Union, are equally responsible for the present situation, for they have consistently refused to strengthen the imple-

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88. However, the *ad hoc* Conciliation Commission under the Covenant on Civil and Political Rights may express "its views on the possibilities of an amicable solution of the matter." Article 42(7)(c), *supra* note 27.

89. Article 40(4) of the Covenant on Civil and Political Rights, *supra* note 27.

90. Article 40(4) of the Covenant on Civil and Political Rights, *supra* note 27.

91. *Supra* note 44.

92. See, e.g., U.N. ECOSOC, Commission on Human Rights, 25th Sess., Item 7(b) of the agenda, *Question of the Violation of Human Rights and Fundamental Freedoms including Policies of Racial Discrimination and Segregation and of Apartheid, in all countries, with particular reference to Colonial countries and territories . . .*, U.N. Doc. E/CN. 4/984/Add. 13, 28 February 1969.

93. See *supra* notes 13 and 14.



mentation measures. While the United States is reluctant to ratify even the most innocuous U.N. conventions on human rights,<sup>94</sup> the Soviet Union frequently challenges the U.N. efforts of introducing "measures of implementation" claiming that they are contrary to Article 2(7) of the U.N. Charter.<sup>95</sup> This is not to say that the smaller nations have done better. They also share the responsibility for not strengthening the implementation measures, for while they frequently demonstrate great concern over apartheid and colonialism and vote for stern measures against the violation of human rights in South Africa and Rhodesia, they do not show a similar concern over violations of human rights in other settings.<sup>96</sup> In the latter situations their approach is invariably cautious, and their recommendations are for considerably weaker measures of implementation.

#### EFFECTIVENESS OF THE REGIONAL ENFORCEMENT MEASURES

Contrasted to the ineffective measures of implementation adopted in the U.N. instruments on human rights, the European regional arrangement offers a model of effective procedures which have, thus far, been efficiently administered. Adopted in 1950, the European Convention on Human Rights and the subsequent Protocols to the Convention have inspired experimentation with similar arrangements in Latin America. Also, in Africa, Asia and the Middle East, the adoption of regional human rights programs has been seriously considered. A brief discussion of the European and the inter-American systems will follow which should provide the necessary background to appraise the effectiveness of such regional arrangements.

#### THE EUROPEAN SYSTEM

The European system offers the most advanced and elaborate measures of implementation in protecting the rights of individuals and groups. The origin of the regional European arrangement could be traced to the Nazi excesses and the tragic experience of World War II on the negative side, coupled with common cultural

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94. See, e.g., MacChesney, *Should the United States Ratify the Covenants? A Question of Merits, Not of Constitutional Law*, 62 AM. J. OF INT'L L. 912 (1968).

95. See, e.g., Carey, *Implementing Human Rights Conventions—The Soviet View*, 53 KY. L.J. 115 (1964).

96. See MacChesney, *supra* note 18.

and historical ties on the positive side. Judged on the basis of its record of performance, the European Convention has proved to be a viable instrument.<sup>97</sup>

### *The European Convention's Implementation Measures*

Under the European Convention, the parties established a European Commission and a Court of Human Rights "to ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention."<sup>98</sup> The Commission and the Court act as the main instruments to implement the convention. In 1955, when six contracting parties agreed to an optional provision entitling an individual to bring a complaint even against his own government, the right of individual petition became effective.<sup>99</sup> The Convention also provides mechanism for obligatory state versus state complaints of alleged breach of the obligations set forth in the convention.<sup>100</sup> A procedure is envisaged under which the case may be referred to the European Court if the Commission, after having determined the admissibility of the complaint, is unable to secure a friendly settlement of the matter and has already reported its finding and opinion on the statement of facts to the parties concerned and also to the Committee of Ministers of the Council of Europe.<sup>101</sup> Primarily, the Commission's function is to ascertain the facts, determine the admissibility of complaints, make necessary investigations, seek to assist the parties in reaching a friendly settlement, and, in case of failure to reach a settlement, report to the parties

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97. See, e.g., FAWCETT, APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS (1969); HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW (A. Robertson ed. 1968); MORRISON, THE DEVELOPING EUROPEAN LAW OF HUMAN RIGHTS (1967); ROBERTSON, HUMAN RIGHTS IN EUROPE (1963); *Symposium on Human Rights: The European Convention and its National Application*, 18 AM. J. COMP. L. 233 (1970); *Symposium, The European Convention on Human Rights*, 14 INT'L & COMP. L.Q. (Supp. No. 11 1965).

98. Convention for the Protection of Human Rights and Fundamental Freedoms [hereinafter cited as the *Convention*]; November 4, 1950, Article 19, 213 U.N.T.S. 222, at 224. The text of the Convention is conveniently contained in 45 AM. J. INT'L L. SUPP. 24 (1951). For the English and French texts of the Convention and its Protocols, see Council of Europe, *European Convention on Human Rights: Collected Texts* (6th ed. 1969).

99. Per article 25 of the *Convention*, *supra* note 98, at 236-38.

100. Article 24 of the *Convention*, *supra* note 98, at 236.

101. See articles 27-32, 47-48 of the *Convention*, *supra* note 98, at 238-46.

concerned and to the Council of Europe its findings on whether or not there has been a breach and to offer proposals for settlement.<sup>102</sup>

If the matter is not referred to the Court, the Committee of Ministers is authorized to decide by a two-thirds majority whether or not there has been a violation of the Convention, and if so, to prescribe the measures the violator should take to remedy the situation, and to set a time limit within which it should do so.<sup>103</sup> If satisfactory measures are not taken during the prescribed time limit, the Committee publishes the Commission's report and determines the nature of measures to be taken.<sup>104</sup> If the matter is referred to the Court, the Committee is to supervise the execution of the Court's judgment.<sup>105</sup> The Parties to the Convention undertake in advance to abide by the decision taken by the Committee of Ministers<sup>106</sup> or the Court,<sup>107</sup> as the case may be.

The function of the Court is to determine whether or not there has been a violation of the Convention.<sup>108</sup> Its jurisdiction is based upon the prior consent of the parties involved,<sup>109</sup> and its judgment is final and binding.<sup>110</sup>

### *Achievements of the System*

Sixteen states have accepted the Convention's procedure on interstate complaints, eleven have accepted the right of individual complaints, and one state has announced her withdrawal from the Convention.<sup>111</sup> While several interstate cases have thus far been decided

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102. See articles 27-31 of the *Convention*, *supra* note 98, at 238-40.

103. Article 32(1) and 32(2) of the *Convention*, *supra* note 98, at 240-42.

104. Article 32(3) of the *Convention*, *supra* note 98, at 242.

105. Article 54 of the *Convention*, *supra* note 98, at 248.

106. Article 32(4) of the *Convention*, *supra* note 98, at 242.

107. Article 53 of the *Convention*, *supra* note 98, at 248.

108. Article 50 of the *Convention*, *supra* note 98, at 248.

109. Article 48 of the *Convention*, *supra* note 98, at 246.

110. Articles 52 and 53 of the *Convention*, *supra* note 98, at 248.

111. States that have ratified the Convention are: Austria, Belgium, Cyprus, Denmark, Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Sweden, Turkey and United Kingdom. The following states recognize the right of individual petition: Austria, Belgium, Denmark, Federal Republic of Germany, Iceland, Ireland, Luxembourg, Netherlands, Norway, Sweden and the United Kingdom. See for the state of ratifications, declarations, and reservations as of Dec. 31, 1968, 11 YEARBOOK OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS [hereinafter cited as *European Yearbook*] for 1968, at 40-41 (1970).

by the Commission, the number of complaints filed by individuals has been in the thousands.<sup>112</sup> The four most widely discussed cases, the *Lawless* case,<sup>113</sup> the *De Becker* case,<sup>114</sup> the *Boeckmans* case<sup>115</sup> and the *Neumeister* case<sup>116</sup> were all brought by individuals. Not only have they added rich jurisprudence for the legal scholar, but they have also clarified the workings of the system and have raised important issues pertaining to the rights of the individual, the states parties to the Convention, and different organs set up under the Convention.<sup>117</sup> In the *Boeckmans* case, a complainant was given reparations in the amount of 65,000 Belgian francs after the subcommission noted that "the remarks made to the Applicant . . . by the [presiding judge] of the Court of Appeals of Brussels were such as to disturb the serenity of the atmosphere during the proceedings in a manner contrary to the Convention and may have caused the Applicant a moral injury."<sup>118</sup>

Under the Convention, state members have on several occasions permitted the Commission to investigate their internal affairs. A commentator has recently observed:

[C]ertain States have accepted the presence of the Commission or of some of its members to carry out investigations in their territory and have given full co-operation for this delicate task. In 1958, members of a Sub-Commission in the first Cyprus case carried out an investigation on the spot for three weeks and, in 1967, the whole Sub-Commission visited a prison and heard evidence in West Berlin in regard to a case (No. 2686/65) where ill-treatment was alleged. In 1966 and 1967, delegated

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112. Between July 5, 1955, when the right of individual petition came into effect and Dec. 31, 1968, 3895 such applications and seven inter-state applications were lodged with the Commission and the Commission took 3452 decisions on the admissibility of individual applications. See 11 *European Yearbook*, at 160. See also Golsong, *The Control Machinery of the European Convention on Human Rights*, in *The European Convention on Human Rights*, *supra* note 97, at 38, 53-55.

113. *Lawless v. Ireland*, No. 332/57, 2 *European Yearbook* 308, 3 *European Yearbook* at 492, 4 *European Yearbook* at 438.

114. *DeBecker v. Belgium*, No. 214/56, 2 *European Yearbook* 214, 5 *European Yearbook* at 320.

115. *Boeckmans v. Belgium*, No. 1727/62, 6 *European Yearbook* 370; 8 *European Yearbook* at 410.

116. *Neumeister v. Austria*, No. 1936/63, 7 *European Yearbook* 224, 11 *European Yearbook* at 812.

117. See, e.g., Gormley, *Development of International Law Through Cases From the European Court of Human Rights: Linguistic and Detention Disputes*, 2 OTTAWA L. REV. 382 (1968); MacBride, *The European Court of Human Rights*, 3 N.Y.U.J. INT'L L. & POLITICS 1 (1970).

118. Noted in 8 *European Yearbook* 410, at 422.

members of two Sub-Commissions heard evidence in Austria and the Commission's Secretary, at the suggestion of the Federal German Government and with the Commission's approval, visited in prison the applicant X. . . .<sup>119</sup>

The most notable impact of the Convention has been to bring about changes in domestic legal systems, such as, amendments to the Austrian Code of Criminal Procedure, the Belgian Criminal Code and the Norwegian Constitution.<sup>120</sup> Only the Greek case stands out as an illustration of a member state's defiance of the European machinery.<sup>121</sup>

However, the Convention is far from perfect. It has been criticized as not being "overly effective" because of "the relatively small number of valid applications, [which] is probably due to two factors: the limited number of national acceptances of the right of individual application and lack of awareness of the Convention by potential applicants."<sup>122</sup> Other notable weaknesses include the "failure to accept the Court's jurisdiction and, to a lesser extent, refusal to include the right of individual application to the Commission."<sup>123</sup>

But even if the Convention be imperfect, it is the most effective instrument yet devised. As mentioned earlier, it has had enormous influence on the internal legal systems of member states; the very fact that there are procedures for bringing a violating state before regional machinery has acted as an effective preventive measure, for this is an action which might give adverse publicity to a state's con-

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119. McNulty, *The Establishing of Procedures and Institutions for the International Protection of Human Rights: The European Approach* 11 (mimeo 1968) cited in Newman, *The New International Tribunal on Racial Discrimination*, 56 CALIF. LAW REV. 1559, 1565 (1968). See also, *Symposium on Human Rights*, *supra* note 97.

120. See MORRISON, *supra* note 97, at 183-199.

121. For the decision of the Commission on the applications of the Governments of Denmark, Norway, Sweden, and the Netherlands against the Government of Greece, see 11 *European Yearbook* 690. For the withdrawal of Greece from the Council of Europe, see documents conveniently contained in 9 INT'L LEGAL MATERIALS 396 (1970). For the text of the resolution adopted by the Committee of Ministers of the Council of Europe (Resolution DH(70)1 adopted on April 15, 1970) on the report of the European Commission of Human Rights concerning charges against Greece, see 9 INT'L LEGAL MATERIALS 781 (1970).

122. Weil in HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW, *supra* note 97, at 343.

123. Weil in HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW, *supra* note 97, at 344.

duct. Thus, a state is likely to take appropriate measures on its own initiative so as not to be found in violation of the Convention. As an example, the Turkish Parliament has systematized the procedure by forming a "Human Rights Group" to examine proposals for laws and all bills in the light of the Convention's provisions.<sup>124</sup> It is indeed a recognition of the unique opportunity afforded by the Convention that applicants of several diverse national heritages have used the Convention machinery.<sup>125</sup>

#### THE INTER-AMERICAN SYSTEM<sup>126</sup>

The American Declaration of the Rights and Duties of Man, approved by the 9th International Conference of American States at Bogota, Columbia, in May 1948,<sup>127</sup> had in fact preceded the Universal Declaration of Human Rights. Also, the Conference had adopted a resolution calling upon the Inter-American Juridical Committee to prepare a draft statute under which an Inter-American Court would be created to guarantee the rights of man.<sup>128</sup> The 10th Conference in 1954 passed a similar resolution.<sup>129</sup> But it is only recently that the American states have systematized the machinery to protect human rights. On Nov. 22, 1969, twelve American states signed the American Convention on Human Rights at the Inter-American Specialized Conference on Human Rights, held in San Jose.<sup>130</sup> A year earlier, in October 1968, the Council of the OAS had approved the draft Convention prepared by the Inter-

124. Weil in HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW, *supra* note 97, at 378-79 (remarks by Polys Modinos).

125. See 1-11 *European Yearbook* for lists of applications and cases brought before the Commission and the Court.

126. For a recent study, see Cabranes, *The Protection of Human Rights by the Organization of American States*, 62 AM. J. INT'L L. 889 (1968).

127. Inter-American Commission on Human Rights, *Basic Documents*, Resolution XXX, American Declaration of the Rights and Duties of Man, at 1, Doc. OEA/Ser.L/V/1.4 (1963). The text is also contained in 43 AM. J. INT'L L. 133 (Supp. 1949).

128. See Pan American Union, *Human Rights in the American States* 117 (1960).

129. *Id.*, Appendices IV & V, at 168 and 170 respectively.

130. See OEA/Ser.K/XVI/1.1, Doc. 70, Rev. 1 & Corr. 1 (English) (1970). The text is conveniently contained in Inter-American Commission on Human Rights, *infra* note 142, at 50 (as Appendix VI), and in 9 INT'L LEGAL MATERIALS 673 (1970).

American Commission on Human Rights as a working paper for the said Conference.<sup>131</sup>

However, this does not mean that during the last two decades the Inter-American system has not made any progress toward ensuring the protection of human rights, for, in 1959, the Fifth Meeting of Consultation of Ministers of Foreign Affairs created the Inter-American Commission on Human Rights, and called upon the Inter-American Council of Jurists to prepare a draft convention on Human Rights and to create a Court of Human Rights.<sup>132</sup> Since then, this Commission has been an active instrument in overseeing the protection of human rights in member states, and in preparing studies and reports for the purpose of promoting the awareness of human rights among the American people.

### *The Achievements of the Inter-American Commission on Human Rights*

Under its Statute,<sup>133</sup> the Commission is to serve the Organization of American States (OAS) as an advisory body in respect of human rights.<sup>134</sup> The following are among specific functions and powers assigned to it: "to develop an awareness of human rights among the peoples of America"; to make recommendations to the governments of member states; to prepare studies and reports; and to ask for information from the member states "on the measures adopted by them in matters of human rights."<sup>135</sup>

In 1965, the Second Special Inter-American Conference at Rio de Janeiro granted the Commission additional functions such as to receive communications and to submit an annual report to the Inter-American Conference or to the Meeting of Consultations of Ministers of Foreign Affairs on the progress made in realizing "the goals

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131. See OAS/Ser.G/V.C-d-1631 (Spanish) (1968). For the text of the draft convention, see Second Special Inter-American Conference, Rio de Janeiro, OEA/Ser.E/XIII.1 (English), Doc. 7 (1965).

132. See Final Act, Fifth Meeting of Consultation of Foreign Affairs, Santiago, Chile, August 12-18, 1959, Pan American Union, Doc. 89 (English) Rev. 2, Oct. 12, 1959, Doc. OEA/Ser.C/II.5 (1960).

133. For the statute see *Basic Documents*, *supra* note 127, at 9.

134. Article 9(e) of the Statute of the Commission, *supra* note 127.

135. Article 9(a-d) of the Statute of the Commission, *supra* note 127.

set forth in the American Declaration," and the areas in which further action should be taken.<sup>136</sup>

To date, the Commission, whose functions and procedures are set on the pattern of the European Commission on Human Rights, has accomplished significant results in its study of alleged violations of human rights in American states, notably Cuba, Haiti, Nicaragua and the Dominican Republic.<sup>137</sup> Since the Cuban and Haitian governments denied the Commission access to their territories and either refused or failed to furnish the requested information, the Commission held sessions outside these territories, conducted independent investigations, and published several reports.<sup>138</sup>

The Commission made on-the-spot investigations in the Dominican Republic and reported its findings in 1962.<sup>139</sup> However, the Commission was most effective there during the internal conflict of 1965.<sup>140</sup> It may be recalled that in 1965, the opposing governments—the Constitutional Government and the Government of National Reconstruction—had asked for the Commission's presence, and had agreed to "respect and maintain in force" the human rights granted in the American Declaration of the Rights and Duties of Man. Also, the Commission had received various communications and reports of arbitrary arrests, inhuman treatment of prisoners,

136. Article 9 of the Statute as amended by Res. XXII of the Second Special Inter-American Conference (1965). O.A.S. Off. Rec., OEA/Ser.L/V/II 14, Doc. 33, April 19, 1966.

137. For a concise account see Thomas & Thomas, *The Inter-American Commission on Human Rights*, 20 SOUTHWESTERN L.J. 282, 287-93 (1966).

138. *Id.*

139. Pan American Union, Inter-American Commission on Human Rights, *Report of the Work Accomplished During Its First Special Session*, Jan. 3-23, 1963, at 11, OEA/Ser.L/V/II.6, Doc. 18 (1963); Inter-American Commission on Human Rights, *Report on the Situation Regarding Human Rights in the Dominican Republic*, OEA/Ser.L/V/II.4 (1962).

140. See generally OAS, *Report on the Activities of the Inter-American Commission on Human Rights in the Dominican Republic*, June 1-Aug. 31, 1965, OEA/Ser.L/V/II. 13, Doc. 14 (1965).

See also Nanda, *The United States Action in the 1965 Dominican Crisis: Impact on World Order*, 43 DENVER L.J. 439 (1966); 44 DENVER L.J. at 225, 256, n.154 (1967); Inter-American Commission on Human Rights, *Report of the Inter-American Commission on Human Rights on Its Activities in the Dominican Republic*, Sept. 1, 1965-July 6, 1966, OEA/Ser.L/V/II.15, Doc. 6 (English) Rev. (1966); Sandifer, *The Inter-American Commission on Human Rights in the Dominican Republic*, June 1965-June 1966, OEA/Ser.L/V/II.14, Doc. 13 (English) (1966); *Preliminary Report of the President of the Commission*, OEA/Ser.L/V/II.12, Doc. 2 (1965).



and even executions. The Commission visited several prisons, conducted personal interviews, and made recommendations to the authorities concerned on the measures they should take to protect right to life, liberty and personal security. Its efforts succeeded in obtaining the release of all political prisoners. The Commission handled almost 1,750 complaints and charges of infractions of human rights, and published two documents on its activities in the Dominican Republic.<sup>141</sup>

Pursuant to the expansion of the Commission's functions by the Second Special Inter-American Conference,<sup>142</sup> which has also modified the Commission's Statute of 1960, the Commission incorporated into its Statute new powers granted by the Conference<sup>143</sup> and modified its regulations.<sup>144</sup> The Executive Secretary of the Commission, Dr. Reque, has recently noted that from 1965, through May 1969, the Commission processed approximately 1,525 communications.<sup>145</sup>

It is noteworthy that besides supervising the conduct of nation states, the Commission has also undertaken numerous studies and reports on important subjects pertaining to human rights, such as, freedom of expression, information, and investigation; the right of petition; the right to education; and reports on economic and social conditions, electoral procedures and suffrage.<sup>146</sup> Now, under the American Convention on Human Rights,<sup>147</sup> the Commission has be-

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141. See *supra* note 140.

142. See, *Report Submitted by the Inter-American Commission on Human Rights*, OEA/Ser.L/V/II.11 (1965). The list of the expanded powers granted the Commission is conveniently contained in *Inter-American Commission on Human Rights, Handbook of Existing Rules Pertaining to Human Rights*, OEA/Ser.L/V/II.23, Doc. 21 (English) Rev. 17-18 (1970) (hereinafter cited as *Handbook*).

143. See *Handbook*, *supra* note 142, at 18-19.

144. *Handbook*, *supra* note 142, at 19-21.

145. In a paper presented at a regional conference of the American Society of International Law held in Denver, Colorado, on May 15, 1969. A copy of the paper is available in the library at the University of Denver Law School, Denver, Colorado.

146. For a brief report, see Sandifer, *Human Rights in the Inter-American System*, 11 HOWARD L. REV. 508, 524-25 (1965).

147. For a commentary on the Convention see Camargo, *The American Convention on Human Rights*, 3 REVUE DES DROITS DE L'HOMME 333 (1970). The text of the Convention is contained in 9 INT'L LEGAL MATERIALS 673 (1970) (hereinafter cited as *American Convention*).

come a principal organ of the Convention and is expected to continue its influence in furthering the protection of human rights.

*The instruments of implementation of the Inter-American System*

The instruments of implementation—the Inter-American Commission on Human Rights<sup>148</sup> and the Inter-American Court of Human Rights<sup>149</sup>—are similar to those in the European Convention. However, the Convention differs from all other existing conventions on human rights insofar as it provides for an obligatory individual right of petition<sup>150</sup> and an optional state versus state complaints procedure,<sup>151</sup> instead of providing for obligatory state versus state complaints and optional individual right of petition.

If the Commission considers a petition or communication admissible,<sup>152</sup> it strives “to reach a friendly settlement of the matter on the basis of respect for the human rights” recognized in the Convention.<sup>153</sup> If a settlement is not reached, the Commission is to report the facts and its conclusions to the states concerned.<sup>154</sup> Proposals and recommendations may also be transmitted with the report.<sup>155</sup> After a lapse of three months from the date of the transmittal of the report, the Commission may set forth its conclusions if the matter has neither been settled nor submitted to the Court.<sup>156</sup> Finally, the Commission, by an absolute majority vote is to decide if the state has taken adequate measures and whether to publish its report.<sup>157</sup>

The Court, compared with its European counterpart, has an added function, which is to exercise advisory jurisdiction concerning the interpretation and application of the Convention and other Inter-American treaties pertaining to human rights.<sup>158</sup> Besides the mem-

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148. Chapter VII, articles 34-51 of the American Convention, *supra* note 147.

149. Chapter VIII, articles 52-73 of the American Convention, *supra* note 147.

150. Article 44 of the American Convention, *supra* note 147.

151. Article 45 of the American Convention, *supra* note 147.

152. See article 47 of the American Convention, *supra* note 147.

153. See article 48(f) of the American Convention, *supra* note 147.

154. See article 50(1 and 2) of the American Convention, *supra* note 147.

155. See article 50(3) of the American Convention, *supra* note 147.

156. See article 51(1) of the American Convention, *supra* note 147.

157. See article 51(2 and 3) of the American Convention, *supra* note 147.

158. See article 64(1) of the American Convention, *supra* note 147.

ber states, the Inter-American Conference, the Council and the Commission on Human Rights are also authorized to invoke the court's advisory jurisdiction.<sup>159</sup> In addition, state parties are able to invoke the advisory jurisdiction to find out if their domestic legislation is compatible with the provisions of the Convention and other Inter-American treaties on human rights.<sup>160</sup>

#### OTHER REGIONAL ARRANGEMENTS

Several other regional arrangements have been under consideration. For instance, an African Conference in 1961, organized by the International Commission of Jurists and held in Lagos, explored the prospects of an African convention on Human Rights. The "Law of Lagos" stated that the proposed Convention should provide for "the creation of a court of appropriate jurisdiction and that recourse thereto should be made available to all persons under the jurisdiction of the signatory States."<sup>161</sup> Although no action has yet been taken to create regional machinery, states have since then seriously considered the proposal. For instance, the Cairo Seminar of Sept. 1969 had a thorough discussion of the issues involved.<sup>162</sup> The League of Arab States has already established a Commission of Human Rights<sup>163</sup> and in Asia, a proposal for establishing a Council of Asia and the Pacific has been under consideration.<sup>164</sup>

#### APPRAISAL AND RECOMMENDATIONS

The discussion thus far has identified three areas in which further research and scholarly inquiry could be fruitful. The first one is that of refining the concept of human rights to make it operative in a functional sense.<sup>165</sup> The second area is that of suggesting pro-

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159. See article 64(1) of the American Convention, *supra* note 147.

160. See article 64(2) of the American Convention, *supra* note 147.

161. See International Commission of Jurists, *African Conference on the Rule of Law*, Lagos, Nigeria (January 3-7, 1961), 11 (1961).

162. See United Nations, *Seminar on the Establishment of Regional Commissions of Human Rights with Special Reference to Africa*, Cairo, Sept. 2-15, 1969, U.N. Doc. ST/TAO/HR/38 (1970).

163. See Marks, *La Commission Permanente Arabe de Droits de l'Homme*, 3 REVUE DES DROITS DE L'HOMME 101 (1970).

164. For a brief discussion of the proposal, see MacBride, *supra* note 117, at 15-16.

165. See notes 4 to 6 *supra* and the accompanying text.

cedural safeguards which will assist in further promoting, exploring and strengthening human rights in the international arena. John Carey has recently suggested the following seven possibilities for promoting human rights: adjudication, compensation, education, deprivation, investigation, negotiation, and publication.<sup>166</sup> But, since the Soviet Union is opposed to investigation, compulsory adjudication and publication, the best promise of acceptance and results lies in education and reporting procedures. However, efforts in the direction of promoting investigation and publications are certainly salutary and desirable. Professor Newman's excellent study on the need for an international ombudsman in the form of a U.N. High Commissioner for Human Rights is thought provoking.<sup>167</sup> Hopefully, the United Nations will take the necessary action to establish a U.N. High Commissioner for Human Rights.<sup>168</sup>

The third and final area is that of devising adequate machinery to protect human rights. The Soviet Union is the foremost proponent of national implementation. The following statement by the Soviet Union outlines its approach:

The draft Covenants must therefore contain measures of implementation which correspond to the generally recognized norms of international law and the principles of the United Nations, *i.e.*, which take into account the sovereign rights, the particular economic, social and national characteristics of the various States. The inclusion in the draft Covenants of any measures of implementation that would open the door to interference in the internal affairs of States would be contrary to the Purposes and Principles of the United Nations, would complicate still further the consideration of this urgent question unjustifiably, and would not contribute to ratification of the Covenants by the largest possible number of States.

The measures of implementation should be founded on the obligation of States to adopt appropriate internal legislative, administrative, social and other measures for the maintenance and protection of human rights. That obligation together with the additional obligation of States to inform the United Nations regularly of

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166. See Carey, *Procedures for International Protection of Human Rights*, 53 IOWA L. REV. 291, 292 (1967). See also Bilder, *Rethinking International Human Rights: Some Basic Questions*, 1969 WISCONSIN L. REV. 171; Korey, *The Key to Human Rights Implementation*, INT'L CONCILIATION (Nov. 1968).

167. See Newman, *Ombudsman and Human Rights: The New U.N. Treaty Proposals*, 34 U. CHI. L. REV. 951 (1967). See also MacDonald, *The United Nations High Commissioner for Human Rights*, 1967 CANADIAN YEARBOOK OF INT'L L. 84.

168. For the latest report of the Third Committee of the General Assembly, see United Nations General Assembly, 26th Sess., Agenda Item No. 61, *Creation of the Post of United Nations High Commissioner for Human Rights*, U.N. Doc. A/8594, Dec. 15, 1971.

the measures they are taking in conformity with the Covenants would form a proper basis for achieving the human rights provided for in the Covenants.<sup>169</sup>

Since individuals or groups in many states may be in no position to seek redress from their own governments, the Soviet insistence on national implementation and reporting as the only acceptable means of implementation is not a satisfactory solution. Regional and universal arrangements are needed to supplement the national implementation measures.

However, a foremost exponent of the human rights programs, Dr. Egon Schwelb, has recently expressed concern over regional efforts to promote human rights. He finds such efforts "extraordinarily disquieting and disturbing,"<sup>170</sup> terms them as "an alarming attempt at the fragmentation of the international action to promote human rights, and artificial creation of parochialism under the pseudonym of regionalism," and urges that "this nightmare [of increased regional efforts] should be unambiguously discouraged."<sup>171</sup> He adds: "For the life of me I cannot see why the Arab League, the Organization of African Unity, SEATO, CENTO could conceivably succeed . . . [if] there is no hope of the United Nations achieving its goal."<sup>172</sup>

It can perhaps be argued that while a common cultural and historical background has been mainly responsible for the success of the European arrangements and the relative success of the Inter-American efforts, other regions are not as homogeneous and are therefore less likely to be effective in offering adequate safeguards to protect human rights.

However, advocates of regional arrangements would argue that such arrangements should be preferred over a universal system for various reasons such as: (1) universalism is often a guise for procrastination; (2) it is hard to reach a meaningful agreement at the U.N. in view of its large membership; (3) regional problems should

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169. 18 U.N. GAOR, Annexes, Agenda Item No. 48, at 13, U.N. Doc. A/5411/Add. 1 (1963).

170. HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW, *supra* note 97, at 355.

171. HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW, *supra* note 97, at 356.

172. HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW, *supra* note 97, at 356.

normally lend themselves to solution by regional arrangements which can be especially sensitive to the special features of the region, such as habits and customs of the people and different levels of economic and political development; (4) regional arrangements to promote human rights might have an ancillary effect of promoting political and economic integration as well; and (5) the European system has certainly proved its worth, a fact which cannot be refuted even by ardent supporters of universalism.

It is instructive to note the results of a 1967-1968 study on "the proposal to establish regional commissions on human rights,"<sup>173</sup> which was conducted by an *ad hoc* study group of the U.N. Commission on Human Rights. The eleven-member group consulted with various existing regional organizations, such as the Council of Europe, the League of Arab States, the Organization of African Unity and the Organization of American States, and held 14 meetings. There was no agreement within the group on the preliminary issue; that is, whether the establishment of regional commissions was "necessary and desirable." Some representatives observed that since human rights were a universal and not a regional problem, the formation of regional commissions "might result in a fragmentation of international effort and in a disservice to the cause of human rights,"<sup>174</sup> while others favored the establishment of such commissions, for, in their opinion, such an establishment would provide wider publicity for human rights work and would offer more opportunity for open and frank discussion among member states than there is at the U.N. On the question of the relationship between the U.N. and regional commissions, most representatives preferred no formal link between the two. It may be noted that at the time of its decision to set up the Study Group, the Commission on Human Rights had "expressed its belief that it was timely to give encouragement to the formation of regional commissions on human rights within or outside the United Nations system."<sup>175</sup>

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173. U.N. ECOSOC, Commission on Human Rights, 24th Sess. Item 4(d) of the provisional agenda, *Report of the ad hoc Study Group Established under Resolution 6 (XXIII) of the Commission on Human Rights*, U.N. Doc. E/CN. 4/966 (1968).

174. *Id.* at 10.

175. *Id.* at 3.

It is submitted that notwithstanding many sound arguments to the contrary, regional arrangements should be encouraged at this stage. For, if the objective is to implement the U.N. human rights program, the U.N. system offers, at best, a weak and ineffective mechanism to accomplish this goal.<sup>176</sup> Witness, for example, the weak measures of implementation included in the U.N. Covenants. Nor is exclusive reliance on national systems an effective guarantee that human rights will be protected and promoted. However, regional arrangements should be voluntary in nature, and should supplement the U.N. efforts. It is further recommended that although the nature of relationship between the U.N. and each of the regional arrangements should be decided by member states parties to a regional arrangement, the U.N. should act as a coordinating body for the various regional arrangements.<sup>177</sup>

As a final recommendation, regional arrangements should be considered in the nature of transitional stop-gap measures, for the most desirable long-range objective, of course, should be the establishment of a universal system which is both efficient and effective.

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176. The recent crisis in Bangladesh and the inability of the United Nations even to discuss the situation arising out of the massive and persistent violations of human rights demonstrates the inadequacies of the UN system to protect human rights internationally. See, e.g., Nanda, *Some Preliminary Questions On the Bangladesh Crisis, the Role of the UN and International Law*, 49 DENVER LAW JOURNAL — (1972).

177. Cf. the discussion in the African seminar, *supra* note 162.